

APPEAL NO. 022328
FILED OCTOBER 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 19, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and that the claimant had disability from October 23, 2001, through the date of the CCH. The appellant (carrier) appealed, arguing that the determinations of the hearing officer are against the great weight and preponderance of the evidence, and are so clearly wrong as to be manifestly unjust. The claimant responded, arguing that there is sufficient evidence to support the determinations of the hearing officer.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury and that he has had disability as defined by Section 401.011(16). Conflicting evidence was presented at the CCH on the disputed issues. The hearing officer could consider the claimant's testimony and the medical reports. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We conclude that the determinations are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **UNIVERSAL UNDERWRITERS GROUP, a division of ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

DISSENTING OPINION:

I respectfully dissent and would reverse. The great weight and preponderance of the credible evidence is that this new manifestation of symptoms is a continuation of the old injury and not a new injury. I do not find sufficient evidence in the record of a specific time, place, and date for a specific injury, and testimony that one has returned to work, even heavy work, performing a variety of activities is insufficient evidence of repetitive trauma. A full release, particularly when there is earlier impairment, does not convert every symptomatic experience thereafter into an "aggravation." In fact, the expected trajectory of many procedures is that there may be setbacks throughout the course of the injury. This case is very similar to the facts in Texas Workers Compensation Appeal No. 92463, decided October 14, 1992.

Susan M. Kelley
Appeals Judge